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Supreme Court of the United States

WALTER C. GROPPLEY  
CLERK

OCTOBER TERM, 1941.

No. 1236.

EQUITABLE LIFE ASSURANCE SOCIETY OF THE  
UNITED STATES, A CORPORATION,  
PETITIONER,

VS.

EMMA R. TUCKER, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT, AND BRIEF IN  
SUPPORT THEREOF.

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VS.

EMMA R. TUCKER, RESPONDENT.

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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE EIGHTH  
CIRCUIT.**

To the Honorable the Supreme Court of the United States:

Your petitioner respectfully shows:

**SUMMARY STATEMENT.**

This is a suit upon a \$5,000 policy of five year term insurance issued by petitioner on the life of respondent's husband.

The case was disposed of in the District Court on cross motions for judgment on the pleadings. The District Court made findings of fact and conclusions of law, and entered judgment in favor of plaintiff. The judgment was affirmed by the Eighth Circuit Court of Appeals, and petition for rehearing denied.

The policy was payable to petitioner in the event of "the death of the insured prior to the fifth anniversary of the Register date" (R. 19). The register date was April 6, 1935 (R. 35). The term of the contract thus expired on April 6, 1940.

The insured's death occurred on April 15, 1940.

The policy was applied for, delivered, and premiums paid in the State of Missouri, and the applicability of Missouri law was conceded (R. 53).

In the opinion of the Eighth Circuit Court of Appeals:

"The controlling question is whether, under the law of Missouri, the five year term life insurance policy, upon which this suit is brought, expired on April 6, 1940, the anniversary of the register date endorsed upon the policy, or on April 20, 1940, the anniversary of the date when the first premium was actually paid" (R. 99).

That statement of the issue is correct if non-payment of the first premium until April 20th is assumed. It disregards the disputed issue as to the date of payment of the first premium, and the documentary evidence showing payment on April 7th, the date of the application.

The insured's age for insurance purposes changed on April 8th, 1935, and if the term of the policy had begun after such date, a different and higher premium rate (\$16.55 per month) than that applied for and on which the policy was issued and carried (\$15.30), would have been required by the company and by the Missouri anti-discrimination statutes (42).

The policy was retained without objection, and all monthly premiums thereon were paid within the grace

period of the premium paying dates stated in the policy as they became due throughout its five year term (42).

The facts stated were admitted by the plaintiff's motion for judgment on the pleadings.

#### **JURISDICTION.**

1. The date of the judgment of the Eighth Circuit Court of Appeals to be reviewed is March 12th, 1942 (R. 109).
2. The date of the order denying the petition for re-hearing is April 6th, 1942 (R. 127).
3. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by Act of February 13, 1925, being now Section 347, Title 28, United States Code Annotated.

#### **QUESTIONS PRESENTED.**

1. Does the decision of the Court of Appeals conflict with the applicable Missouri decisions holding that the expiration of term insurance is governed by the date of termination stated in the policy and not by the date of payment of the first premium on the policy?
2. Does the decision of the Court of Appeals conflict with the applicable Missouri decisions holding that the anti-discrimination statute prohibits fixing the term of an insurance policy by the date of payment of the first premium when a change of age occurs between the policy date and the date the premium is paid which would cause a higher premium rate to be applicable if the latter date were to govern?
3. Does the decision of the Court of Appeals conflict with the applicable Missouri decisions holding that an insured is under a duty to accept or reject a policy of insurance within a reasonable time, failing which he is bound by its terms as a matter of law?

4. Does the decision of the Court of Appeals, in holding that a final judgment may properly be entered on motions for judgment on the pleadings, when a fact essential to such judgment is denied and the alleged fact is refuted by documentary evidence appearing in the pleadings, depart from the accepted and usual course of judicial proceedings or sanction such a departure by the lower court?

### **REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.**

#### I.

The decision of the Circuit Court of Appeals in holding that the date of payment of the first premium controlled the expiration of the policy, rather than the date provided in the policy itself, despite the fact that this was not ordinary life insurance payable in the event of death whenever it should occur, but term insurance with a fixed expiration date, is a decision of an important question of local law in a way probably in conflict with applicable local decisions.

#### II.

The decision of the Circuit Court of Appeals in holding that the fact of a change in age between the date of the policy and the date of payment of the first premium which would discriminate in favor of the insured in the matter of premium rates, does not prevent the latter date from determining the term of the policy, is a decision of an important question of local law in a way probably in conflict with applicable local decisions.

#### III.

The decision of the Circuit Court of Appeals in holding that mere retention of a policy is not sufficient to establish an agreement to the policy dates or an acceptance thereof as a matter of law, and enforcing a contract

for a different term than that contained in the policy, despite the fact that the insured retained the policy without objection and paid premiums thereon monthly in accordance with the policy dates for its entire duration, is a decision of an important question of local law in a way probably in conflict with applicable local decisions.

## IV.

The decision of the Circuit Court of Appeals in holding that a case in which an alleged fact essential to plaintiff's recovery is disputed in the pleadings, and the pleaded documents refute the plaintiff's allegation on that issue, may nevertheless be finally decided in favor of the plaintiff on motions for judgment on the pleadings, by drawing an inference contrary to the pleaded documentary evidence on such issue, so far departs from the accepted and usual course of judicial proceedings, or so far sanctions such a departure by the lower court, as to call for an exercise of this court's power of supervision.

Wherefore, your petitioner prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Eighth Circuit in this cause, that the judgment of said Court be reversed by this Court, and for such other further relief as to this Court may seem proper.

Dated May 13th, 1942.

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